

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|   |   |                      |
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| In the Matter of                        | ) |                      |
|   | ) |                      |
| Federal-State Joint Board on            | ) |                      |
| Universal Service                       | ) | CC Docket No. 96-45  |
|   | ) |                      |
| 1998 Biennial Regulatory Review -       | ) |                      |
| Streamlined Contributor Reporting       | ) |                      |
| Requirements Associated with            | ) |                      |
| Administration of Telecommunications    | ) | CC Docket No. 98-171 |
| Relay Service, North American Numbering | ) |                      |
| Plan, Local Number Portability, and     | ) |                      |
| Universal Service Support Mechanisms.   | ) |                      |
|   | ) |                      |
| Telecommunications Services for         | ) |                      |
| Individuals with Hearing and Speech     | ) |                      |
| Disabilities, and the Americans with    | ) | CC Docket No. 90-571 |
| Disabilities Act of 1990.               | ) |                      |
|   | ) |                      |
| Administration of the North American    | ) |                      |
| Number Plan and North American          | ) | CC Docket No. 92-237 |
| Numbering Plan Cost Recovery            | ) | NSD File No. L-00-72 |
| Contribution Factor and Fund Size.      | ) |                      |
|   | ) |                      |
| Number Resource Optimization            | ) | CC Docket No. 99-200 |
|   | ) |                      |
| Telephone Number Portability            | ) | CC Docket No. 95-116 |
|   | ) |                      |
| Truth-in-Billing and Billing Format     | ) | CC Docket No. 98-170 |

**REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

## Executive Summary

The National Association of State Utility Consumer Advocates (“NASUCA”), presents these reply comments on the universal service fund (“USF”) contribution mechanism.<sup>1</sup> In initial comments, NASUCA showed that major structural changes to the contribution mechanism are not necessary, and argued specifically that the connection-based mechanism (“CBM”) proposed by the Federal Communications Commission (“Commission”) would represent an unneeded and inequitable change.

In these reply comments, NASUCA focuses on the comments of the so-called “Coalition for Sustainable Universal Service” (“CSUS”). The members of CSUS were responsible for the November 14, 2001 *ex parte* that was the genesis of the Commission’s proposal. See CSUS Comments at 9. The members of CSUS -- the two largest interexchange carriers (“IXCs”), two groups representing large telecommunications users, and a data-based competitive local exchange carrier (“DLEC”)<sup>2</sup> -- all would benefit substantially from adoption of the Commission proposal or the CSUS proposal. This is particularly true for AT&T and WorldCom, Inc., whose contribution to the universal service system would be cut drastically.

CSUS’ comments rely on claimed problems with the current USF contribution system that allegedly make the current revenue-based system “inequitable, discriminatory, unsustainable, insufficient and unpredictable.” *Id.* at 17. CSUS also

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<sup>1</sup> NASUCA is an association of 42 consumer advocates in 40 states and the District of Columbia. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Chapter 4911, Ohio Rev. Code.

<sup>2</sup> See *id.* at 3-4.

asserts that the CSUS proposal, by contrast, is equitable, non-discriminatory, sustainable, sufficient and predictable. See *id.* at 35-77. In key respects, both assertions are wrong.

At base, CSUS' stated issues with the current system depend on the existence of a so-called "death spiral," where the revenue base on which USF contributions are assessed shrinks, and the amount of contributions needed expands, so that the assessment factor grows and grows. As shown here, the supposedly "shrinking revenue base" can be addressed without adopting a connection-based mechanism.

There are also better ways to address consumer confusion that may arise under the current mechanism. First among them is to forbid line items to collect USF contributions. If line items are allowed, consumer safeguards, such as uniform labeling and a bill-and-remit system, must be a part of any contribution mechanism.

## **Introduction**

In its Further Notice of Proposed Rulemaking ("FNPRM") released February 26, 2002, the Commission asserted that trends in the telecommunications marketplace could erode the contribution base for the Commission-ordered universal service fund ("USF").

FNPRM, ¶ 1. The Commission requested comments on:

- Whether to assess contribution based on the number and capacity of connections provided to the public network. *Id.*, ¶ 2.
- Whether a connection-based assessment would ensure the long-term stability and efficiency of the contribution system in a dynamic telecommunications marketplace. *Id.*
- Other reforms to the contribution process. *Id.*

Numerous parties filed initial comments.<sup>3</sup> NASUCA's reply comments will address the ways in which the comments either do not support or actively undercut the Commission's arguments for the connection-based mechanism. As noted above, NASUCA will focus on CSUS, but will also addresses issues raised by other supporters of the CBM.<sup>4</sup>

First, NASUCA addresses the claims that the current system is "broke" [*sic*] (Sprint at 24), especially the claims that the contribution base for USF contributions is shrinking. As discussed in NASUCA's initial comments and further here, it does not appear that the current contribution base is actually shrinking. Even if it were, the solution is to expand the base, not to alter the contribution mechanism radically, as the

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<sup>3</sup> In addition to CSUS, initial comments were filed by the Ad Hoc Telecommunications Users Committee ("Ad Hoc"); the Alaska Telephone Association ("AlaskaTA"); the Allied Personal Communications Industry Association of California ("CaAPCIA"); the American Association of Paging Carriers ("AAPC"); the American Public Communications Council ("APCC"); Arch Wireless, Inc. ("Arch"); Association of Communications Enterprises ("ASCENT"); AT&T Corp. ("AT&T"); AT&T Wireless Services, Inc. ("AWS"); Beacon Telecommunications Advisors, LLC ("Beacon"); BellSouth Corporation ("BellSouth"); BT North America Inc. ("BTNA"); California Public Utilities Commission and the People of the State of California ("California"); the Concerned Paging Carriers ("CPC"); Consumers Union, Texas Office of Public Utility Counsel, Consumer Federation of America, Appalachian People's Action Coalition, Center for Digital Democracy, Edgemont Neighborhood Coalition and Migrant Legal action Program (CU *et al.*); the Information Technology Association of America ("ITAA"); the National Exchange Carrier Association, Inc. ("NECA"); the National Rural Telecom Association and the Organization for the Protection and Advancement of Small Telephone Companies ("NRTA/OPASTCO"); the National Telecommunications Cooperative Association ("NTCA"); Nextel Communications, Inc. ("Nextel"); OnStar Corporation ("OnStar"); PaeTec Communications, Inc. ("PaeTec"); the Rural Independent Competitive Alliance ("RICA"); Sprint Corporation ("Sprint"), the State of Texas ("Texas"); Teletouch Communications, Inc. ("Teletouch"); Time Warner Telecom, XO Communications and Allegiance Telecom ("Time Warner, *et al.*"); TracFone Wireless, Inc. ("TracFone"); United States Cellular Corporation ("USCC"); United States Telecom Association ("USTA"); Verizon Wireless; Virgin Mobile USA, LLC ("VMU"); VoiceStream Wireless Corporation ("VoiceStream"); Western Wireless Corporation ("Western Wireless"); and a group of 14 small rural telephone companies ("SRTC"). Failure to address any specific issue raised by any other commenter, including CSUS, should not be deemed to be NASUCA's acquiescence in the commenters' position.

<sup>4</sup> The issues presented here are unusual in their ability to leave apparently similarly situated entities on both sides of the fence: LEC/IXC/CLEC/wireless consortia (compare CSUS to Sprint); small LECs (compare NRTA/OPASTCO to SRTC); and ISP responsibility to fund the USF (ITAA and Sprint). This results in USTA taking essentially a neutral stance.

switch to a connection-based mechanism would do.<sup>5</sup> That and other “fixes” to the current system can address the issues raised by the proponents of a connection-based mechanism.<sup>6</sup>

Next, the central problem with a connection-based mechanism is addressed: It takes virtually all of the responsibility to fund universal service off the shoulders of IXC's. This alone is grounds for rejecting the proposed mechanism.

Yet the connection-based mechanism itself does not provide the benefits claimed for it. This is especially true in comparison to what an improved version of the current mechanism would represent.<sup>7</sup>

Finally, the issues surrounding how carriers collect their USF assessment costs from their customers are addressed. Nothing in the comments counters NASUCA's proposal that carriers be forbidden from establishing a line item on their bills to pass through the USF contribution. If a line item is permitted, it should be labeled uniformly and be limited to the exact amount of the contribution.

Before proceeding to argument, NASUCA would note agreement with CU *et al.* that the Commission's systematic disregard of earlier comments supporting the revenue-based mechanism and attacking the CBM, and acceptance of an *ex parte* as the basis for its own proposal, violates “[b]asic principles of due process and administrative law....”

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<sup>5</sup> The Commission's other “universal service” mechanisms, like TRS, NANP, LNP and others are also collected on a revenue basis. See California at 10. The attempts of some parties to distinguish the programs is feeble at best. See WorldCom at 15.

<sup>6</sup> PaeTec's proposal (at 2-3) to substitute a tax for the USF is wildly outside the scope of this proceeding.

<sup>7</sup> ITAA, among others, identifies complications that will occur in defining a connection. ITAA at 15. California, among others, identifies the arbitrage problems inherent in the Commission's proposal. California at 12.

CU *et al.* at 4. That error is exacerbated by the lack of independent support for the Commission's proposal.

**A. The flaws in the current system are exaggerated. A revenue-based mechanism can be improved.**

CSUS asserts, comprehensively, that the current revenue-based contribution mechanism is “inequitable, discriminatory, unsustainable, insufficient and inequitable.” CSUS at 17. This laundry list must be broken down to its individual components in order to understand how flimsy are the bases for the CSUS proposal. By contrast, as shown in NASUCA's initial comments, the current system, with modifications, is equitable, non-discriminatory, sustainable, sufficient and predictable. We will examine “sustainability” first, because that is the primary claim in support of the connection-based mechanism.

1. Sustainability

According to CSUS, the current system is not sustainable. First, CSUS alleges that interstate end user revenues are shrinking and the fund is growing, leading to increased contribution factors. CSUS at 18-23.<sup>8</sup> Then, CSUS asserts that increasing contribution factors will lead to a “death spiral,” in which the shrinking of revenues accelerates the increase in contribution factors. *Id.* at 23-28.

NASUCA agrees with CSUS that, as a result of Commission rulings, both past and expected, the USF will continue to grow. *Id.* at 18-20.<sup>9</sup> These increases will occur

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<sup>8</sup> The supporters of the CBM uniformly assert the decline in interstate and international revenues. See, e.g., Ad Hoc at 5; ITAA at 4.

<sup>9</sup> Increases to the USF resulting from ILECs losing customers to CLECs (*id.* at 19), if an actual result of the MAG and RTF Orders, should be prevented by altering those portions of the orders.

regardless of the form of the contribution mechanism. The Commission should review those decisions now to ensure that the increased amounts for the USF are indeed necessary and being used for the purposes authorized by the Act.

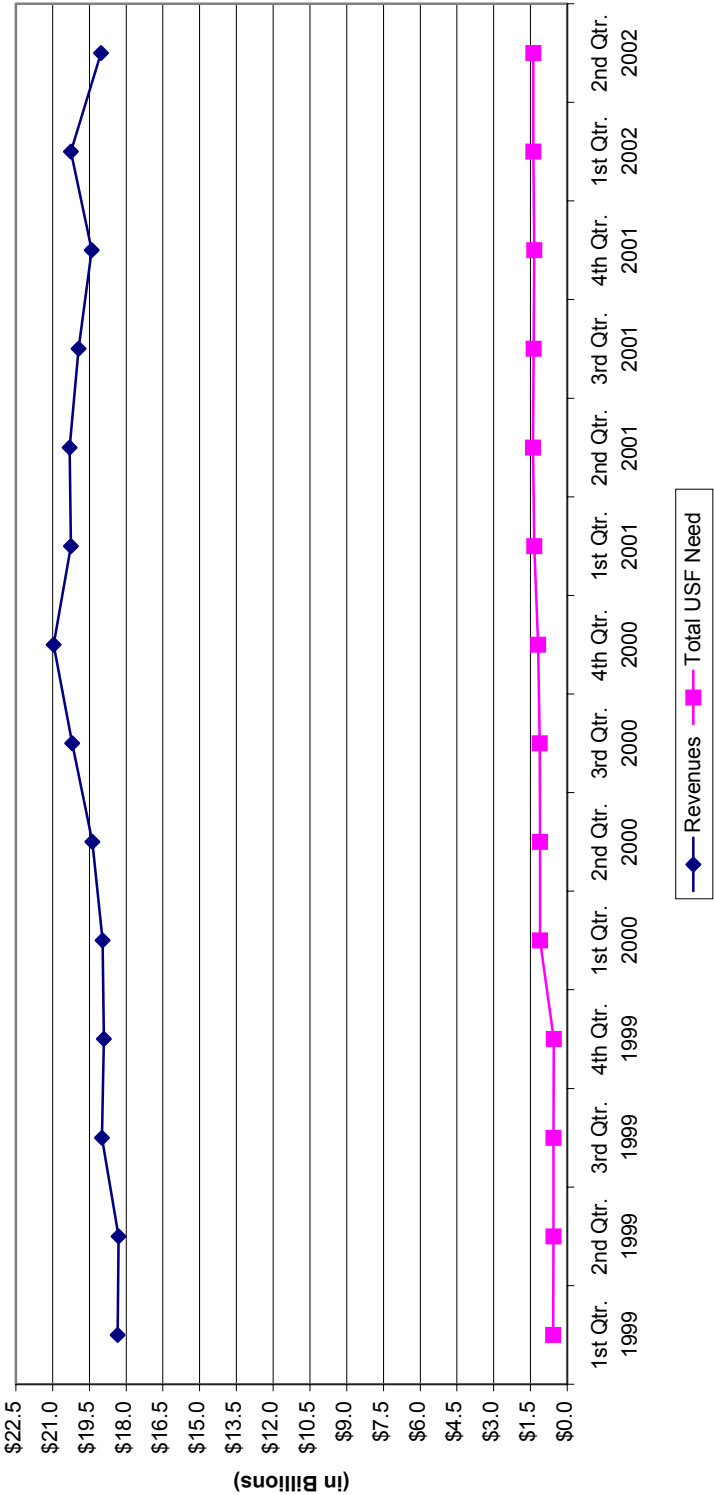
The key to CSUS' proposal, however, is the proposition that, while the size of the fund grows, the assessment or contribution base is shrinking. CSUS supports this argument with selective citation to the USAC-reported contribution base, as does Sprint (at 5).<sup>10</sup> As shown in NASUCA's initial comments, the long-term trend for the contribution base is not appreciably downward. See NTCA at 5.

The chart on the following page, which shows the contribution base and USF fund size since the first quarter of 1999, graphically shows the error in the CSUS position:

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<sup>10</sup> BellSouth, among others, brings nothing new to the discussion of the environment, citing only those factors asserted by the Commission. BellSouth at 2-3. These factors were addressed, and refuted, in NASUCA's initial comments.

Table 1





According to CSUS, the purported “shrinkage in the universal service assessment base ... is primarily due to a sharp decline in ... assessable ... revenues reported by interexchange carriers.” CSUS at 21. Table 2 in NASUCA’s initial comments showed, to the contrary, that interstate toll revenues had consistently increased.

CSUS’ support for its proposition is that there has been a “dramatic” decline in ILECs’ interstate minutes of use since the second quarter of 2000.<sup>11</sup> CSUS also says that interstate and international toll revenues have declined. CSUS Attachment 4 at 12.

A fundamental flaw in CSUS’ arguments is the consistent projection of short term variations into a long term trend, such that immediate and drastic action is needed. NASUCA submits that the data do not show any long term trend.

More importantly, in the context of universal service funding, these assertions about toll revenues are hardly relevant. CSUS acknowledges that the supposed decline in IXC revenues “most likely” results from substitution of e-mail, instant messaging, long distance over the Internet and “most of all wireless long-distance service, for wireline long-distance service.” *Id.* at 21-22; see also NRTA/OPASTCO at 4, 6. As previously noted, therefore, the *total* contribution base is not shrinking. Time Warner, *et al.* at 16-17; Beacon at 4.

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<sup>11</sup> As a response to the question of the level of *CLEC* minutes of use, the Kelley/Nugent Affidavit (Attachment 4 to CSUS Comments) says only that the “total for CLEC minutes ... is less than the decline in ILEC minutes.” Attachment 4 at 16, n. 32. The degree of the margin is not revealed; one suspects that if the margin were large, the fact would have taken a prominent place in CSUS’ argument. CSUS should be challenged to present their Chart 1 with CLEC MoU included.

Clearly, any “shrinkage in the universal service assessment base” can be addressed by looking more closely at the forms of interstate communications that have substituted for the previously assessed wireline interexchange calling. See NECA at 3-4; NRTA/OPASTCO at 3; NTCA at 5-10; RICA at 5; Time Warner, *et al.* at 18; USCC at 9-10.. That should be the Commission’s first resort to solve the problem, if there is a problem.<sup>12</sup> BellSouth notes that “exceptions and loopholes ... instill instability in the assessment mechanism. It does not matter whether the mechanism continues to be revenue-based or whether the Commission adopts a flat-rate mechanism.” NASUCA agrees.<sup>13</sup>

Sprint’s proposal would maintain the current relative contribution responsibility of the interstate carriers. Sprint at 11-12. Sprint provides an inadequate rationale for not increasing the total contribution responsibility of wireless carriers, given the increase in interstate wireless traffic. See BellSouth at 6.

Broadening the contribution base is not addressed by CSUS. CSUS thus combines an increased fund with projected falling revenues, which understandably yields high assessment factors. CSUS at 23. CSUS’ view depends upon having only the currently used revenues as the source of USF funding.

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<sup>12</sup> ITAA supports the CBM because it would divert attention from moves to make ISPs contribute to the USF. ITAA at 4; see also Sprint at 10. For the reasons set out in the comments of the Consumer Advocates in CC Docket 02-33, those who benefit from the existence of the ubiquitous network -- which includes ISPs -- should contribute to universal service. See NRTA/OPASTCO at 12-15; SBC at 13-14.

<sup>13</sup> Interestingly, USCC, a cellular carrier itself (USCC at 2) supports eliminating the wireless safe harbors. *Id.* at 9.

CSUS' projections of increased assessment factors would take the USF mechanism into a "death spiral." *Id.* Yet if the contribution base for the revenue-based mechanism is broadened, as proposed by NASUCA, the death spiral will not occur. As discussed below, CSUS' cautionary tale is a disguise for the immediate release from funding responsibility that CSUS' members would likely see.

2. Sufficiency and predictability

CSUS' allegations about the sufficiency and predictability of the current mechanism depend entirely on the existence of a death spiral. CSUS at 17. Hence to the extent that the "death spiral" is not a real threat, or can be averted by changes to the current mechanism, this undercuts the rationale for the CSUS and FCC proposals.

3. Discrimination and equity

CSUS addresses these subjects together. CSUS at 28-35. The centerpiece of the argument is the attack on the use of historical revenues to calculate current USF contributions for carriers whose revenues are falling. CSUS at 29-31. This is the situation in which both AT&T and WorldCom find themselves. FNPRM, ¶ 7.

The distresses of these two carriers are hardly reason to rethink the whole system.<sup>14</sup> Yet AT&T's and WorldCom's concerns could also be addressed by shortening the reporting lag, allowing true-ups based on actual revenues and the "collect and remit" mechanism discussed in NASUCA's initial comments, all within the current revenue-based system. See CSUS at 79; AT&T at 10-12; CU *et al.* at 17; Nextel at 13. These

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<sup>14</sup> Sprint, which has continued to gain revenues, commiserates with AT&T and WorldCom. Sprint at 5.

would fix this problem from these IXC's perspective, but would not allow the IXCs to escape responsibility for contributing to the USF, as does the CBM.

CSUS also asserts that the current system, through the CMRS safe harbor provisions, discriminates in favor of wireless carriers and against wireline carriers. CSUS at 31-34; see also *id.* at 78. In this regard, NASUCA agrees with CSUS.<sup>15</sup> Yet reforming the safe harbor provisions can and should be a fix for the current system, and does not require the major structural change proposed by CSUS.<sup>16</sup>

Sprint asserts that "in order to be equitable to consumers, the assessment methodology should correspond to the benefits derived from universal service." Sprint at 6. Sprint uses this to justify a per-line charge. *Id.* at 6-7. Sprint says that this is because "there is always a potential benefit to each end user from universal service and the connection of more and more end users to the public network." *Id.* at 7 (emphasis in original). What Sprint misses is that the benefit of a larger network to users who actually use the network is greater than the value to those who might, but do not, use the network.

#### 4. Conclusion

CSUS' claims about the problems of the revenue-based mechanism are at once too narrow and too broad. They focus only on declining revenues of the IXCs, and fail to recognize the availability of other sources for USF contributions. Other problems can be

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<sup>15</sup> As CSUS notes, the number of wireless subscribers grew more than 43% from December 1999 through June 2001. CSUS at 37. And wireless revenues doubled from 1998 to 2001. NTIA at 6. This makes Verizon Wireless' argument (at 12-13, 16-18) that wireless carriers should not bear an increased burden entirely baseless.

<sup>16</sup> But see VMU at 10. Nextel (at 5) argues that CMRS carriers' USF contribution should be frozen rather than increased. It is clear that Nextel's reasons have nothing to do with how much interstate traffic and revenues the CMRS carriers actually experience. *Id.* at 4-5.

solved by changing the current system, rather than by the wholesale restructuring proposed by CSUS and the Commission.

**B. CSUS' proposal is inequitable and discriminatory. CSUS' proposal is no more sustainable nor predictable than the current system.**

As noted above, CSUS combined its claims that the current system is inequitable and discriminatory into a single argument. As also noted above, these aspects of the current system can be fixed without major changes.

Yet the CSUS-proposed connection-based mechanism is itself inequitable and discriminatory. The flaws in the CBM, however, cannot be cured by tinkering; they are inherent in the plan.

First, the CSUS plan is inequitable and discriminatory in its source of contribution, by largely excluding the IXC's from responsibility for funding the USF.<sup>17</sup> This is discussed at greater length in the next section, which focuses on the illegality of the plan. CSUS' statement that "relative industry segment burden is irrelevant to an analysis of whether a contribution mechanism is 'equitable and nondiscriminatory'..." (CSUS at 44) lacks any basis in law or logic.

Second, the CSUS plan is inequitable and discriminatory in that it requires residential customers who do not use the interstate services that are the funding base for the federal USF, or who use those services only a little, to contribute to the fund at the

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<sup>17</sup> As NECA asserts, the CBM would also exempt "pure resellers, operator service providers, prepaid calling providers, and dial-around providers." NECA at 6. Yet as TracFone notes, it would be assessed a USF contribution of \$1.00 a month for its prepaid wireless service, regardless of the amount of interstate calling that occurs over the prepaid wireless connection. TracFone at 8.

same level as high and medium users of interstate service.<sup>18</sup> See California at 5-6; CPC at 11; OnStar at 4; RICA at 4. CU *et al.* present specific evidence showing the impact on low- and no-use customers. CU *et al.* at 10-12.<sup>19</sup> Only a revenue-based mechanism comes close to matching contribution responsibility to use of interstate services.

Indeed, as BTNA notes, the current mechanism “imposes an identical contribution obligation on all telecommunications offerings, regardless of the identity of the carrier or the end-user.” BTNA at 7. The CCUS-proposed CBM imposes different obligations on carriers (paging vs. wireline) and customers (single-line and multi-line) alike. See CaAPCIA at 5.

Third, as noted by Time Warner, *et al.*, a CBM would be “extremely costly” for the carriers that would have to develop systems to track connections, especially for multiline business customers. Time Warner, *et al.* at 14; see also Arch at 7. And a CBM would be in addition to, not a substitute for, the revenue-based mechanism used for other federal and state programs. Time Warner, *et al.* at 14. As CaAPCIA states, “a connection-based model merely replaces a well-established revenue-based assessment with one that will be at least as cumbersome to monitor and implement.” CaAPCIA at 7.

Next, as to sustainability, CSUS’ arguments with regard to the current mechanism depend on maintaining the current system as is, with the assumed declining revenues and an increasing fund. If the revenue base is broadened to include all interstate traffic, there is nothing inherent about a revenue-based mechanism to render it unsustainable. As

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<sup>18</sup> As TracFone notes (at 15), a CBM also discriminates against *carriers* who target low-use customers.

<sup>19</sup> NECA notes (at 5) that the CBM would be a greater burden on customers of rural LECs that pay the NECA USF rate, which is lower than the national USF rate.

Nextel notes, the key to managing the program is managing the growth in funding requirements. Nextel at 15. On the other hand, any apparent greater sustainability of a connection-based mechanism cannot overcome the inequitable and unlawful aspects that are fundamental to the mechanism.

**C. CSUS' arguments do not show that the proposal is lawful.**

CSUS argues that “relevant industry segment burdens are not relevant.” CSUS at 77. Under CSUS’ and the Commission’s mechanism, the burden on IXC’s will go from 63% of contributions (FNPRM, ¶ 59) to some substantially lower amount, based on the number of connections provided by the IXC’s.<sup>20</sup> See NRTA/OPASTCO at 8. Nothing in CSUS’ proposal explains why a shift of such a magnitude would be appropriate, reasonable or in the public interest.<sup>21</sup> As SBC states, the CSUS mechanism “allows entire classes of interstate telecommunications providers -- particularly the *largest* providers of interstate telecommunications services -- to avoid contributing to the universal service fund.” SBC at 6; see also *id.* at 18-20; BellSouth at 5-6; California at 7; CU *et al.* at 14-15; NTCA at 2; RICA at 2-3; Time Warner, *et al.* at 5; Verizon Wireless at 5. CSUS’ attempts to show that its proposal is lawful do not succeed.

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<sup>20</sup> IXC’s would take some – presumably minuscule – portion of the 76% of total responsibility shared by LECs and IXC’s. FNPRM, ¶59.

<sup>21</sup> The other major responsibility shifts in CSUS’ (and the Commission’s) proposal include the increases in responsibility for wireless service and paging service. The increased use of interstate wireless service justifies the former. Based on the comments of paging carriers, it does not seem that the increase on those carriers is justified. See Arch at 9-10; CaAPCIA at 4; CPC at 7-8, 9-10; Teletouch at 5, 9-10.

CSUS principally argues against a straw man argument, which would hold that every interstate provider must contribute something. CSUS at 82.<sup>22</sup> Then CSUS raises the contrary point of the *de minimis* exception, and says that all providers are subject to the “equitable and nondiscriminatory” and the “specific, predictable and sufficient” requirements of the Act. *Id.* at 83. None of these arguments show that CCUS’ proposal is lawful. See SBC at 6.

CSUS argues that its proposal meets the requirements of § 254(d) because “[v]ery few telecommunications carriers provide no connections to end users.” *Id.* CSUS’ unsupported statements are clearly inadequate to prove its point. As Time Warner *et al.* state (at 5-6), “IXCs provide end user connections to only a small percentage of their customers.” See also RICA at 3. As VMU notes, “IXCs will contribute to the extent that they have local exchange or special access operations -- in other words, to the extent they do not operate as IXCs.” VMU at 7.

Yet according to CSUS, “Carriers such as AT&T and WorldCom provide significant numbers of connections to end users, both for local exchange service and for special access and private line services.” *Id.* Yet neither AT&T nor WorldCom has actually put on the record even a ballpark number of its actual connections to end users, so the impact of the CSUS proposal cannot be evaluated fairly. What is particularly significant is the number of their end user connections compared to the number of AT&T/WorldCom customers who *do not have* a direct connection to the IXC.<sup>23</sup> See also

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<sup>22</sup> See also ASCENT at 3.

<sup>23</sup> If this information is filed as proprietary, NASUCA will seek access to the information under an appropriate protective agreement.



WorldCom at 6. NTCA states that the current IXC contribution of 63% of the USF would be reduced to approximately 25%. NTCA at 3; see also Verizon at 20-21.

CSUS' argument on the other qualitative requirements of § 254(d) ( CSUS at 84-87) has at its base a presumption that assessing the IXCs for their interstate traffic cannot possibly be equitable, nondiscriminatory, specific, predictable or sufficient. As shown here, CSUS' arguments fall far short of an adequate demonstration on this point.<sup>24</sup>

CSUS' argument on the *de minimis* side appears to be that because the Commission can exempt carriers whose contribution to the USF fund would be minimal from the requirement to contribute, the Commission can declare that any carriers' contribution *will* be minimal and thus will not be assessed. See *id.* at 87. CSUS also argues that "[i]nterstate connections provide a different, but still reasonable metric of a carrier's [interstate] 'telecommunications activities.'" *Id.* at 89. Neither of these circular arguments is consistent with Congressional intent on the *de minimis* provision. Time Warner, *et al.* at 8-9.

CSUS provides extensive discussion of the economic virtues of flat end user charges *vis a vis* usage-based (or revenue-based) assessments. CSUS at 45-47. Yet these arguments (and the scholarly articles that support them<sup>25</sup>) do not address the central

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<sup>24</sup> NRTA/OPASTCO propose a flat end user charge for all customer contacts with an interstate carrier, in order to avoid the shift away from the IXCs allowed by CSUS' proposal. NRTA/OPASTCO at 11. This would apparently place the same flat charge on each and every instance where the customer used dial-around, casual calling or prepaid calling provided by an IXC. See WorldCom at 11. Revenue-based contributions do not present this problem.

<sup>25</sup> CSUS at 46, n. 110.

statutory flaw in the CCUS proposal: that IXC's which do not act as CLECs or sell special access will have no USF contribution responsibility whatsoever.

In addition, despite CSUS' claims that the initial assessment amounts set out in CSUS' (and the Commission's) proposal are reasonable (CSUS at 61-66), it is equally clear that the amounts are arbitrary. See Arch at 8-9. The mere fact that multi-line business is treated as a residual is an indication of arbitrariness.<sup>26</sup> As noted in NASUCA's initial comments, from an end user perspective, there is insufficient information in the record to assess what shifts among end user classes would occur as a result of the CCUS proposal.<sup>27</sup>

The same problem clings to CSUS' arguments that residential customers will benefit from its proposal. Assuming *arguendo* that CSUS' claims that the average residential customer will benefit are valid,<sup>28</sup> this is merely an artifact of the arbitrary \$1.00 level of the charge. At what level of charge would the average residential customer *not* benefit? At what level of charge would *no* residential customer see a greater charge than under the current system?<sup>29</sup> The arbitrariness of the amounts in the Commission's

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<sup>26</sup> Although it has been claimed that in the past residential customers have benefited from being the subject of residual rate increase amounts, twenty-first century regulation should disfavor such arbitrary, non-cost-based mechanisms.

<sup>27</sup> ITAA notes that for multiline business, a T-1 connection, with 24 times the speed of a dial-up connection, will incur only five times the USF charge. See also ASCENT at 13; SRTC at 12-13; USCC at 5. This is an indication of why the large users support the CBM. As NRTA/OPASTCO note, the Commission's multiline business "capacity scheme... raises many more questions than it provides answers." NRTA/OPASTCO at 17; see also *id.* at 17-20; NECA at 10; Time Warner, *et al.* at 22-23.

<sup>28</sup> NASUCA does not have access to the "bill harvesting" data used by CSUS. CSUS Attachment 2 at 5.

<sup>29</sup> Presumably, that would be if the connection charge for wireline were no greater than the current ILEC USF charge, about 50¢ a month.

proposal leads, for example, AAPC to attempt to negotiate a lower charge for pagers, 2% of the proposed charge, and less than pagers are currently paying. AAPC at 5.

As another example of the weakness of CSUS' arguments, it should be noted that CSUS claims that the increases in the USF in 2002 and 2003 "further increases the baseline for any credible consumer impact analysis..." CSUS at 76. Yet the \$1.00 per connection charge is based on current levels of funding; if additional funding is needed in subsequent years, either the \$1.00 connection charge will also have to increase or the residual amount assessed on multiline businesses will have to increase. Thus both the baseline (the current mechanism) and the connection-based mechanism will have to be increased, regardless of the system that is used. CSUS' claim of a benefit in this regard is disingenuous at best.

At base, the proponents of a CBM (including the Commission itself) have failed to show how today a CBM can be justified when the Commission previously rejected such a methodology. See Arch at 3-4; Time Warner *et al.* at 11-13; Verizon Wireless at 10. None of the proponents of the CBM adequately distinguishes the Commission's prior statement that a per-line assessment mechanism would be unreasonable. CU *et al.* at 16. As CU states (*id.*), "[t]he logic of this statement has not changed in the five intervening years." The Commission's earlier reasons remain valid.

**D. Appropriate features of the CSUS proposal**

CSUS proposes that, in the event of increases in the size of the fund, all per-line assessments would increase proportionately.<sup>30</sup> This is appropriate, *assuming that the initial levels of the assessment were correctly set*, and further assuming that increases for residential customers do not have a negative impact on universal service. In that circumstance, NASUCA agrees with Ad Hoc (at 10) that multiline business customers should not alone bear the brunt of increases in the USF, although we fundamentally disagree with many of their arguments in support of the position. *Id.* at 10-16.

CSUS also proposes that the mechanism be based on “collect and remit.” CSUS at 47-48; see also AT&T at 9; AWS at 6-7; Sprint at 15-17. This could work for the current revenue-based mechanism as well.<sup>31</sup>

**E. The Commission should not “bifurcate” the USF.**

NRTA/OPASTCO and the SRTC's propose splitting the USF into two parts, with the high cost fund to be collected through a per-line assessment, and the remainder to be collected through a revenue-based mechanism. NRTA/OPASTCO at 2-22; SRTC's at 9. This proposal would only exacerbate the flaws in both mechanisms. SBC, on the other hand, proposes a CBM for everything but occasional and casual calling. SBC at 7-12. Again, SBC fails to justify the need for this radical change. Indeed, SBC acknowledges

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<sup>30</sup> “If the anticipated shortfall, for example, would be two percent, then all assessment rates ... would be increased by two percent.” CSUS at 15-16; see also Ad Hoc at 8.

<sup>31</sup> NRTA/OPASTCO object to “collect and remit” because it would encourage scofflaws -- both carriers and consumers -- not to contribute. NRTA/OPASTCO at 23. Surely this exaggerates the incentives.

that its proposal does not “rely on distinctions between ... interstate versus interstate revenues.” *Id.* at 15. Yet under the law, it is interstate carriers that must contribute to the USF.<sup>32</sup>

**F. The method for passing carriers’ USF contributions through to customers.**

AT&T asserts that carriers’ “good faith efforts to fashion recovery mechanisms *inevitably* result in line-item charges of substantially varying amounts.” AT&T at 5 (emphasis in original). AT&T’s solution is to mandate a specific line item for this cost. *Id.* at 6. NASUCA submits that the preferable solution is to forbid such line items, and require carriers to treat USF contribution like any other cost. See also CU *et al.* at 17-18.<sup>33</sup> If there is to be a line item, NASUCA agrees with California (at 4), Texas (at 5) and CU *et al.* (at 20-21) that there should be no mark up to the line item.

Also, WorldCom’s commitment to educate consumers (WorldCom at 12-13) will do little to address the fundamental inequities of the CBM. If line items are forbidden, no customer education -- on this subject at least -- would be necessary.

NASUCA supports uniform labeling. See, e.g., California at 14-15; Texas at 5; CU *et al.* at 21-26. Carriers like AT&T do not fundamentally disagree with this idea, although AT&T quibbles that truncated versions like “Fed Univ Svc Fee” should be

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<sup>32</sup> SBC’s proposal also uses connections as a residual after application of an arbitrary factor to occasional calling, and has arbitrary capacity tiers for multiline business connections. *Id.* at 11.

<sup>33</sup> Forbidding line item collections also addresses the issue of whether USF collections should be marked up to cover uncollectibles and administrative costs. See AT&T at 8, SRTC at 13. As long as the costs are included in overall rates, a carrier can mark up its USF contribution to its heart’s content, and consumers will be able to compare that carrier’s overall rates to others’. Forbidding line items would also address the concern raised by TracFone (at 12) because it cannot add a line item for its prepaid wireless service.

allowed. AT&T at 17. It is hard to believe that a matter of 16 characters rather than 29 characters (for the full spelling of “Federal Universal Service Fee”) could make a difference, given the marketing and other material that typically appears on customers’ bills.<sup>34</sup>

Beacon also raises the point that the “simplicity” of having a single USF surcharge may cause negative consumer reaction against the carrier (the ILEC) that is required to assess the surcharge. Beacon at 2. Here again, the IXC’s will be freed from this backlash.

## **G. Conclusion**

In the end, NASUCA is gratified that CSUS has made a point of arguing that its proposal will not force customers to abandon the telephone network. CSUS at 72. Of course, for a proponent of change to the universal service fund mechanism to acknowledge that the change will harm universal service would be somewhat absurd.

On the other hand, CSUS’ argument that the issues raised here should not be referred to the Federal-State Joint Board on Universal Service (CSUS at 97-99; see also Sprint at 20) depends entirely on CSUS’ claim that there is a crisis in the USF contribution mechanism. As shown herein, the crisis does not exist. Especially given the gaps in the record supporting the connection-based mechanism and the widespread

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<sup>34</sup> Time Warner, *et al.*’s arguments (at 24-26) for carrier flexibility to charge whatever they want and call the charge anything they want assume that enforcement will be more effective than a prophylactic standard. This is without basis.

opposition to the proposal, the Commission should either reject the proposed mechanism or refer it to the Joint Board so that an adequate record can be developed.<sup>35</sup>

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<sup>35</sup> Referral to the Joint Board and making key information public in the course of such referral could solve the threshold legal problems identified by CU *et al.* (at 2-3; 5-9).